

VERMONT LEGAL AID PROPOSED CHANGES TO DRAFT 3.1 OF S.89

Proposed Changes in red	Reasons
<p>13 V.S.A. § 4821(c)(2):</p> <p>(c) In conducting a review as to whether to seek placement of a person in a forensic facility, the Human Services Community Safety Panel shall consider the following criteria: . . .</p> <p>(2) dangerousness factors, including:</p> <p>(A) Whether the person has inflicted or attempted to inflict serious bodily injury on another, attempted suicide or serious self-injury, or committed an act that would constitute sexual or lewd and lascivious conduct with a child and there is a reasonable probability that the conduct will be repeated if admission to a forensic facility is not ordered;</p> <p>(B) Whether the person has repeatedly threatened to inflict serious bodily injury to the person or others and there is reasonable probability that the conduct will occur if admission to a forensic facility is not ordered;</p> <p>(C) Whether the results of any applicable evidence-based violence risk assessment tool assessment by a psychologist indicates that the person's behavior is deemed a significant risk to others if admission to a forensic facility is not ordered;</p>	<p>Repeated dangerousness was one of the entrance criteria recommended by Hillary Ward, LICSW, who presented to the workgroup on September 20. See Use of the Forensic Facility for those with IDD (vermont.gov), Slide 6:</p> <p>Entrance Criteria</p> <ul style="list-style-type: none"> • Legal Charges • Efforts made to provide lower levels of care: <ul style="list-style-type: none"> - Individual Therapy - Skills Training/Coaching in an outpatient setting - One-to-One Staffing up to 24/7 • Repeated Dangerousness to Others <p>The current draft doesn't identify or define which "evidence-based violence risk assessment tool" might be used, or whether the predictive value of such tools for individuals with intellectual disability has been studied and tested. A psychologist is qualified to interpret the result of any appropriate tools, and integrate those results with other clinical data.</p>

13 V.S.A. § 4823:

§ 4823. FINDINGS AND ORDER; PERSONS WITH AN INTELLECTUAL DISABILITY

(a) If the court finds that ~~such a~~ person is a person in need of custody, care, and habilitation as defined in 18 V.S.A. § 8839, the court shall issue an order of commitment directed to the Commissioner of Disabilities, Aging, and Independent Living for placement in a designated program in the least restrictive environment consistent with the person's need for custody, care, and habilitation of such person for an indefinite or limited period in a designated program for an indefinite or limited period, except that an order for placement in a forensic facility is limited to 90 days, and may only be extended as provided in subdivision (c) of this section.

(b) ~~Such order of commitment shall have the same force and effect as an order issued under 18 V.S.A. § 8843 and persons committed under such an order shall have the same status, and the same rights, including the right to receive care and habilitation, to be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. § 8843.~~ When the Commissioner seeks to place have a person committed to the Commissioner's custody in a forensic facility, the Commissioner shall provide a statement expressly stating that such placement is being sought and setting forth the reasons for the Commissioner's determination that clinically appropriate treatment and programming can be provided safely only in a forensic facility, including the recommendation of the Human Services Community Safety Panel pursuant to 13 V.S.A. § 4821. The court on its own motion or upon the motion of the person or the person's attorney or the State of Vermont

This is consistent with the initial order of hospitalization for a person with mental illness. "An initial order of hospitalization shall be for a period of 90 days from the date of the hearing." 18 V.S.A. § 7619.

Distinguishes commitment to the Commissioner's custody under Act 248 from placement of the committed person in a forensic facility as their designated program.

shall authorize examination of the proposed patient by a psychiatrist other than psychiatrist who originally determined that a forensic facility level of care is required. The examination and subsequent report or reports shall be paid for by the State of Vermont. The physician shall report his or her finding to the party requesting the report or to the court if it requested the examination. Placement at a forensic facility pursuant to this section shall constitute the designated program required by subdivision (a)(1) of this section and 18 V.S.A. § 8845(c) only if the court finds that efforts to provide lower levels of care were made and were unsuccessful. Nothing in this section shall be construed as prohibiting the Human Services Community Safety Panel from recommending additional services and habilitation at a designated program for a person committed under this section.

~~(c) Section 4822 of this title shall apply to persons proposed for discharge under this section; however, judicial proceedings shall be conducted in the Criminal Division of the Superior Court in which the person then resides, unless the person resides out of State in which case the proceedings shall be conducted in the original committing court.~~ Prior to the expiration of an order placing a person committed to the Commissioner's custody in a forensic facility, if the Commissioner determines treatment in a forensic facility is still needed, the Commissioner shall apply to the Family Division of the Superior Court for a determination that the placement in a forensic facility continues to be the person's least restrictive environment and for an order of continued placement in a forensic facility. Judicial review procedures for an order issued pursuant to subsection (a) of this section and for discharge from an order of commitment shall occur in accordance with 18 V.S.A. § 8845.

People with an intellectual disability facing placement in a forensic facility should have the same right to an independent psychiatric examination as those with mental illness have under 13 V.S.A. § 4822(b) and 18 V.S.A. § 7614.

Trying lower levels of care before placing someone in a forensic facility was one of the entrance criteria recommended by Hillary Ward, LICSW, who presented to the workgroup on September 20. See [Use of the Forensic Facility for those with IDD \(vermont.gov\)](#), Slide 6:

Entrance Criteria

- Legal Charges
- Efforts made to provide lower levels of care:
 - Individual Therapy
 - Skills Training/Coaching in an outpatient setting
 - One-to-One Staffing up to 24/7

For persons with a mental illness, if the Commissioner of Mental Health believes continued treatment is needed in a secure facility, the burden is on the Commissioner to seek an extension before the order expires. See 18 V.S.A. § 7620. Similarly, if the DAIL Commissioner seeks to continue forensic facility placement of a person committed under Act 248, the burden should be on the Commissioner to file in court for an extension. The burden should not fall on the person with an intellectual disability who has been placed in an institutional setting to file for court review of their placement, for the same reasons cited by the Vermont Supreme Court in *In re G.K.*, 147 Vt. 174, 179 (1986) ("The failure of patients to request a hearing may be attributable to their incompetence, their lack of knowledge of the relevant procedures, the effort necessary to utilize the

	procedures, the cost of pursuing review, the disorienting effects of drugs or other treatments, or institutional pressures to rely on staff judgments rather than to invoke legal remedies”).
<p>18 V.S.A. § 7101:</p> <p>§ 7101. DEFINITIONS</p> <p>As used in this part of this title, the following words, unless the context otherwise requires, shall have the following meanings:</p> <p><u>(31)(A) “Forensic facility” means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an individual initially committed pursuant to:</u></p> <p>(i) <u>3 V.S.A. § 4822 who is in need of treatment or further treatment pursuant to chapter 181 of this title within a secure setting</u> for an extended period of time; or</p> <p>(ii) <u>13 V.S.A. § 4823 who is in need of custody, care, and habilitation pursuant to chapter 206 of this title, within a secure setting</u> for an extended period of time.</p>	<p>Placement in a forensic facility would only be for as long as the secure setting is the person’s least restrictive environment. 13 V.S.A. § 4823(a), 18 V.S.A. § 8845. This would not necessarily be a long-term placement.</p>
<p>18 V.S.A. § 8845</p> <p>(b) Judicial review. Procedures for judicial review of persons committed under this subchapter shall be as provided in section 8834 of this title, except that proceedings shall be brought in the Criminal Division of the Superior Court in the unit in which the person resides or, if the person resides out of state, in the unit which issued the original commitment order.</p>	

~~(e)(1)~~ Commitment. A person committed under 13 V.S.A. § 4823 or this subchapter shall be entitled to a judicial review of the person's need for commitment annually. The Family Division of the Superior Court shall have exclusive jurisdiction over all judicial review proceedings brought under this section. If no ~~such~~ judicial review is requested by the person within one year from the date of the last order of commitment, it shall be initiated by the Commissioner. However, ~~such a~~ a person may initiate a judicial review under this subsection ~~after beginning~~ 90 days after initial commitment but before the end of the first year of the commitment, ~~or if commitment has been continued under this subchapter~~, the person may petition for review after 90 days from the date of an order for continued commitment. If the order of commitment placed the person in a forensic facility, and the Commissioner determines treatment and programming in a forensic facility is still needed, the Commissioner shall apply to the Family Division of the Superior Court for a determination that the placement in a forensic facility continues to be the person's least restrictive environment and for an order of continued placement in a forensic facility.

~~(d)(2) If the Commissioner seeks to place the person committed pursuant to 16 this subchapter in a forensic facility, the petition shall expressly state that such 17 placement is being sought. The petition shall set forth the reasons for the 18 Commissioner's determination that clinically appropriate treatment and 19 programming can be provided safely only in a forensic facility Continued commitment~~

(A) If at the completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that at the time of the hearing that the person is still in need of continued custody, care, and habilitation, commitment shall continue in a designated program in the least restrictive environment consistent with the person's need for custody, care, and habilitation for an indefinite or limited period, except

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that in no case shall an order for initial or continued placement in forensic facility exceed a ninety-day period.

Regular review of placement in a forensic facility is needed to ensure people with intellectual disabilities are transitioned to treatment and supervision in a community-based setting as soon as clinically appropriate, and do not get “stuck” in an institutional setting.